HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.8820 of 2003

25th April, 2007.

Between:

M.Satyanarayana
and others

… Petitioners

and

The Special Court under A.P.Land Grabbing
(Prohibition) Act at Hyderabad, rep. by its
Chairman, Boorgula Ramakrishna Rao Bhavan,
Tank Bund Road, Hyderabad and another.

… Respondents

HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.8820 of 2003

ORDER: (Per Hon'ble Sri Justice B.Prakash Rao)

The petitioners are respondents before the Special Court who by way of this writ petition are seeking for certiorari assailing the orders in L.G.C.No.4 of 1999 dated 29-01-2003 on the file of the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, Hyderabad, allowing the application filed by respondent No.2 herein under Section 8 of the said Act to hold that the petitioners are land-grabbers and seeking their eviction.

Heard Sri Bajrang Singh Thakur, learned counsel appearing for petitioners and Sri K.Mohan, learned counsel appearing for 2nd respondent.

In the application filed by 2nd respondent, the case set out was that it is a partnership firm, which has purchased the site in an extent of 207 square yards under a registered sale deed dated 21-05-1996 from one R.Bhaskar, which is marked as

Ex.A-1, who in turn purchased under registered sale deed dated

05-12-1985 marked as Ex.A-3 from one D.Balraj, who again in turn purchased an extent of 357 square yards under a registered sale deed dated 20-08-1984 vide Ex.A-4 from Kasula Kistaiah. Therefore, it is the case of 2nd respondent applicant that after publication in the newspaper calling upon objections and entering into an agreement dated 29-02-1996, the said purchase was made and since then, they have been in possession and enjoyment. After purchase, necessary amends have been made by making some construction. However,

there has been a police complaint filed by the applicant's vendor and the petitioners had issued a notice complaining against the said construction and they filed a suit O.S.No.261 of 1996 wherein status quo was granted for some time, but was not extended. Respondent No.2 applicant also filed O.S.No.757 of 1996 and obtained status quo order and in the suit a Commissioner was also appointed in I.A.No.1139 of 1996, who after making local inspection, filed a report whereupon the court i.e. XI Assistant Judge, City Civil Court, Secunderabad, passed order restraining both parties from entering into the premises till disposal of the suit. However, the applicant surprisingly found that there is construction made by adding a room and therefore an application was filed under Order XXXIX Rule 2-A of Code of Civil Procedure complaining of the violation of the aforesaid orders passed. The petitioners had also filed O.S.No.171 of 1996 and another suit O.S.No.49 of 1997 and they are pending. Hence, the case of the applicant was that there has been an illegal claim and grabbing and encroachment of the land and therefore, the application.

Contesting the case of the respondent applicant, the petitioners submitted that having regard to various suits which are pending between the parties, the very application itself is not maintainable and further, originally the property belonged to one Mutyala Venkaiah, who filed an application for resumption of the land under Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, which was accorded vide orders dated

12-3-1963 by the Revenue Divisional Officer, Hyderabad. It is also

their case that the applicant has no valid title at all and there is a dispute between his vendor and the predecessors-in-title. Therefore, the application is not maintainable.

With these and other allegations, the Special Court framed the issues and the parties went into trial where on behalf of 2nd respondent applicant, PWs 1 and 2 were examined and marked Exs.A-1 to A-26 and on behalf of petitioners, RWs 1 to 3 were examined and marked Exs.B-1 to B-3. On appraisal thereof, the Special Court found that 2nd respondent had proved and established his right, title and interest in the schedule property, whereas the petitioners have not established their right and therefore, they are held as land-grabbers. Hence, this writ petition.

Sri Bajrang Singh Thakur, learned counsel appearing for petitioners mainly sought to proceed with his submissions on the ground that the applicant has no locus since a partnership firm has no right to file an application under the provisions of A.P. Land Grabbing (Prohibition) Act and further there being no proof in respect of existence of partnership with all the details, the application as framed and filed is not maintainable. That apart, in this case, no act of land grabbing as alleged is made out and therefore, the very application has to be thrown out.

Sri K.Mohan, learned counsel appearing for the respondent applicant sought to sustain the findings of the Special Court stating that only after considering the relevant material and the documents produced by both sides, it was found that the applicant's title is perfectly valid whereas that of the petitioners is not sustainable, and

therefore there is no justification for the claim made by the petitioners.

With the aforesaid submissions as made by both sides across the Bar, the ultimate point boils down to whether in the facts and circumstances, the petitioners can be termed as

land-grabbers. Before proceeding to go into the question, which arises for consideration, an objection is sought to be raised in regard to the very maintainability of the application where no particulars are forthcoming. However, in this regard, the respondent applicant sought to place reliance on Ex.A-17 dated 30-12-1993 which is a certificate of registration granted by the competent authority under the Partnership Act and which shows that it is a registered partnership firm. On a reading of the proceedings before the Special Court and also on perusal of the material, it appears that there is nothing to doubt about the existence of partnership, which on the face of it is registered as pointed out above and therefore we do not find any substance in the contention made on behalf of petitioners in this regard.

Coming to the facts of the case, apart from oral evidence which is let in on behalf of both sides, the applicant's vendor, who has been examined as RW-2 on behalf of the applicant, does not deny the execution of sale deed and it transpires that petitioners 3 to 6 sold the property to the said

RW-2 in the first instance and who in turn sold the same to PW-2, who in turn again sold the same to the applicant. In view of such evidence available on record about the transfer of title from one to the other without any demur, there is a complete and unhindered conveyance of

title in favour of the applicant. Further, having regard to the sale in favour of the applicant being earlier in point of time than the alleged sale in favour of 2nd petitioner herein vide Ex.B-3 sale deed, the question of further alienees or any such alienable rights at that point of time does not arise and therefore, the purchase made by the applicant was held to be ultimately a complete and valid transaction and it is not affected in any manner by the said sale made vide Ex.B-3. Further, there is a categorical finding that the alleged sale under Ex.B-3 was made only to cause wrongful loss to the respondent applicant. There has been a complete appraisal in depth and in detail in regard to the transfer affected by the predecessors-in-title of the applicant and also the alleged claim as made by the petitioners. The plea that there was an action for cancellation of sale made by RW-2 was found to be not substantiated for want of any material in support thereof. That apart, as long as the completed sale is not tinkered with in the manner in which the law contemplates and it is set aside, the title of the applicant does not in any manner gets affected. Even it has been found in the evidence of RW-3, who has been examined on behalf of petitioners, that he has knowledge about the transaction between RW-2 and PW-2, which only confirms the transaction in favour of the applicant herein. Therefore, the Special Court has held that the alleged transaction under Ex.B-3 is not valid and not binding on the applicant. Having regard to these categorical findings which are purely that of facts and which cannot be said to be based on no evidence or material in support thereof and further on the face of it, the said findings are well augmented with the reasons and as such, the petitioners cannot say

that the said findings are in any way perverse. As held by this Court in SHALIVAHANA BUILDERS PVT LTD. Vs. SRI GANAPATHY COOPERATIVE HOUSING SOCIETY [1], this Court in exercise of power under Article 226 of the Constitution of India cannot convert the writ petition into that of a first appeal nor is there any warrant to come to a different conclusion. In view of the same, we do not find any merit in the contentions urged on behalf of petitioners. Hence, there are no merits in the writ petition.

The writ petition is accordingly dismissed. No order as to costs.

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B.PRAKASH RAO, J

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M.VENKATESWARA REDDY, J

25th April, 2007

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[1] 2003 (2) ALT 511 (D.B.)